

Chapter 275, LICENSES AND PERMITS

[HISTORY: Adopted by the City Council of the City of Binghamton as indicated in article histories. Amendments noted where applicable.]

GENERAL REFERENCES

Advertising -- See Ch. 163.
Disorderly conduct -- See Ch. 220.
Health and sanitation -- See Ch. 259.
Peddling and soliciting -- See Ch. 307.
Public assembly -- See Ch. 318.
Use of rights-of-way -- See Ch. 324.
Sales -- See Ch. 331.

ARTICLE I, Licenses [Adopted 10-5-1970 (Ch. 12, §§ 12-1, 12-2 and 12-4 of the 1970 Code)]

§ 275-1. City Clerk to issue licenses; exception.

The City Clerk is authorized for and in behalf of the City, to grant and issue all licenses authorized by any ordinance of the City Council, except dance licenses authorized to be issued by the Chief of Police.

§ 275-2. Payment of expenses where permission is requested of Council. [Amended 10-4-1971 by Ord. No. 195-71]

In all cases where an applicant is required by law to obtain the permission of the Council of the City of Binghamton in order to perform some act or to carry on a certain activity, the applicant shall pay to the City of Binghamton a sum as set from time to time by resolution of the City Council, prior to the adoption by the Council of the necessary approval legislation. Said payment is intended to compensate the City of Binghamton for all the necessary costs incurred by the City in the introduction and adoption of the ordinance granting permission. Such payment shall be required in addition to the payment of any fees which are otherwise established for the procurement of licenses.

§ 275-3. Purchase and sale of old metal.

Pursuant to the provisions of § 60 of the General Business Law, the City Clerk will issue in the Mayor's name a license to buy and sell old metal within the City.

ARTICLE II, Collateral Loan Brokers [Adopted 10-5-1970 (Ch. 12, Art. IV, §§ 12-80 through 12-92, of the 1970 Code); amended in its entirety at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]

§ 275-4. License required.

It shall be unlawful for any person to carry on the business of collateral loan broker (formerly known as a "pawnbroker") in the City without taking out a license as hereinafter provided.

§ 275-5. Qualifications of applicant for license.

No person shall be licensed as a collateral loan broker (formerly known as a "pawnbroker") who has not been a resident of the City for at least six months next preceding the date of such license and is not of the age of 21 years and upwards.

§ 275-6. Issuance of license; fee.

The City Clerk, upon proper application being made to him or her, shall, under his or her hand and the Seal of the City, issue and deliver to any proper and suitable applicant therefor a license to conduct the business of collateral loan broker (formerly known as a "pawnbroker"), upon payment to said Clerk of a fee as set from time to time.

§ 275-7. Identification of place of business.

Any person applying for a license under the provisions of this article shall state in his or her application for such license the street and number of the building where he or she proposes to carry on such business, which street and number shall be stated in said license, and the licensee shall not be permitted to change said location to any other place without permission from the Mayor or City Council of the City.

§ 275-8. Sign required.

Every person licensed under the provisions of this article shall place or suspend in front of his or her place of business in a conspicuous manner a sign bearing his or her name and the words "Licensed Collateral Loan Broker."

§ 275-9. Recordkeeping.

Every collateral loan broker (formerly known as a "pawnbroker") licensed under the provisions of this article shall keep a book in which shall be fairly written at the time of each loan an accurate account and description of the goods, articles and things pawned, and the amount of money loaned thereon, and the time of pledging the same, and the name, residence, age, complexion, sex, style of beard, if any, height, weight and a general description of the person pawning or pledging such goods, articles or things.

§ 275-10. Records open to inspection.

The book required to be kept pursuant to § 275-9 shall at all times be open to the inspection of any and all persons holding office under and in pursuance of the Supplemental Charter of the City.

§ 275-11. Memorandum to be given.

Every collateral loan broker (formerly known as a "pawnbroker") shall, at the time of each loan, deliver to the person pawning or pledging any goods, articles or things, a memorandum or note, signed by him or her containing the substance of the entry required to be made in his or her book, mentioned in § 275-9, and no charge shall be made for such entry or memorandum.

§ 275-12. Hours of operation.

It shall be unlawful for any collateral loan broker (formerly known as a "pawnbroker") to receive any goods by way of pawn or pledge, except between the hours of 7:00 a.m. and 6:00 p.m. on weekdays, except on Saturdays and then only between the hours of 7:00 a.m. and 12:00 midnight, nor shall any business be transacted by collateral loan brokers (formerly known as "pawnbros") as such between the hours of 12:00 midnight on Saturday and 7:00 p.m. on Monday.

§ 275-13. Age requirement for clerks.

It shall be unlawful for a collateral loan broker (formerly known as a "pawnbroker") to employ any clerk or other person under the age of 16 years to take any pledge.

§ 275-14. Reports to Chief of Police.

Every person licensed as a collateral loan broker (formerly known as a "pawnbroker") under the provisions of this article shall, before 10:00 a.m. of each and every business day, report to the Chief of Police of the City, on blank forms to be furnished by the City, a description of all articles received by him or her in pawn the business day immediately preceding, together with the number of the pawn ticket issued therefor and the amount loaned thereon.

§ 275-15. Penalties for offenses.

Every person who shall be convicted of violating any of the provisions of this article shall be punished as follows:

- A. Carrying on the business of a collateral loan broker (formerly known as a "pawnbroker") without a license: \$100 per day.

B. Violation of any other provision of this article: a fine of not less than \$25 nor more than \$100 and suspension or revocation of license.

ARTICLE III, Secondhand Dealers [Adopted 9-20-1982 by Ord. No. 124-82 (Ch. 12, §§ 12-120.1 through 12-138, of the 1970 Code)]

§ 275-16. Legislative purpose. [Added 1-24-1983 by Ord. No. 5-83]

A. The Council of the City of Binghamton has observed that the City of Binghamton has experienced an increase in the number of house burglaries during the late 1970s and early 1980s. This Council has found and determined that the disposition of such stolen property is easily accomplished by the perpetrators of such crimes and offenses at secondhand and junk shops on a "no questions asked" basis.

B. This Council is vested with the power to provide for the licensing and regulation of dealers in secondhand goods pursuant to § 20(13) of the General City Law and § 24(24) of the Supplemental Charter of the City of Binghamton. Said power is predicated upon the protection of the public health, safety and welfare. Accordingly, this article is enacted for the purpose of licensing dealers in secondhand goods for the protection of the public and to aid law enforcement officials in their efforts to control and reduce the incidents of crime involving stolen personal property.

§ 275-17. License required; fee.

A. No person, either as principal, agent or employee, shall, within the corporate limits of the City of Binghamton, establish, engage in or carry on the business of a dealer in secondhand goods as defined herein, either separately or in connection with some other business, without first having obtained and paid for and having in full force and effect a license as provided by this article.

B. The fee for licenses issued under this article shall be in an amount as set from time to time by resolution of the City Council.

§ 275-18. Definitions.

For the purposes of this article, the following words and phrases shall have the meanings ascribed to them by this section:

DEALER IN SECONDHAND GOODS -- Any person engaged in the commercial exchange, purchase and/or sale of secondhand articles for any purpose and of whatever nature, including but not limited to gold or other precious metals, coins, stamps, currency and jewelry subject to the exclusions set forth below in § 275-7.

PERSON -- Includes the singular and the plural and shall also mean and include any person, firm or corporation, association, club, copartnership, society or any other organization.

§ 275-19. Exclusions. [Amended 1-24-1983 by Ord. No. 5-83]

Nothing contained in this article shall be construed to apply to:

A. Automobiles and automobile parts.

B. The first purchase, exchange or sale in this country of any imported secondhand article.

C. The acceptance or receipt of merchandise in a new condition as a return or exchange for a credit or refund.

D. The first sale of merchandise which has been rebuilt, refurbished or received as a trade to offset the purchase price of new goods sold as part of the same transaction. Any such rebuilt, refurbished or trade-in merchandise shall clearly be marked and sold as such.

- E. A thrift shop as classified by the Internal Revenue Code of the United States of America thereby entitled to an exemption as an eleemosynary corporation or institution.
- F. Any exchange, purchase or sale conducted as part of any trade show, convention or exhibition.
- G. A garage sale or rummage sale conducted by a person not normally engaged in the business of conducting such sales.
- H. The conduct of any duly licensed auction.
- I. Any junk dealer licensed pursuant to Article 6 and/or Article 6-C of the New York State General Business Law.
- J. The sale or resale of clothing or apparel.
- K. Transactions between dealers.

§ 275-20. Application for license. [Amended 1-24-1983 by Ord. No. 5-83]

Any person desiring to procure a license as herein provided shall file with the City Clerk a verified application upon a blank form prepared by the City Clerk and furnished by the City. Such application shall contain the following information:

- A. Name, description and date of birth of applicant.
- B. Home address of applicant.
- C. Business address of applicant.
- D. Telephone number of business.
- E. Name of business.
- F. Type of business (i.e., firm, partnership, association, corporation, etc.):
 - (1) If a partnership, names and addresses of all partners, both general and limited.
 - (2) If a corporation or association, names and addresses of all principal officers.
- G. A statement as to whether or not the applicant, any partner or any principal officer has been convicted of any crime, or any violation of any municipal ordinance, the nature of the offense and the punishment or penalty therefor.
- H. A certificate from the Sealer of Weights and Measures of the County of Broome certifying that all weighing and measuring devices to be used by the applicant have been examined and approved pursuant to law.
- I. A statement as to whether the business is permanent or transient. Transient vendors shall be subject to the transient retail merchants tax set forth in Article I of this chapter.

§ 275-21. Combined secondhand dealers/collateral loan brokers prohibited.

It shall be unlawful for any person to operate a combined secondhand dealer/collateral loan broker shop pursuant to the provisions of § 47 of the General Business Law.

§ 275-22. Issuance of license. [Amended 1-24-1983 by Ord. No. 5-83]

A. The City Clerk shall send a copy of the above-mentioned verified application to the Detective Division of the City of Binghamton Bureau of Police for investigation. Said Detective Division shall report its findings, if any, to the City Clerk within seven business days of the receipt and filing of said application.

B. Upon receipt of the findings of the Detective Division, the City Clerk shall, except as set forth below, issue to the applicant a license as required by § 275-5, signed by the City Clerk or the Deputy City Clerk.

C. In accordance with the legislative purpose of this article, no license shall be denied except when the applicant(s) and/or principal(s) of the business has been convicted in a court of competent jurisdiction within five years prior to the date of said application of any (1) offenses involving damage to or intrusion upon property; or (2) offenses involving theft; or (3) offenses involving fraud; or (4) felonies against the person involving physical injury; or (5) violations of this chapter. However, the denial of a license for any above-enumerated grounds shall be consistent with the provisions of Article 23-A of the New York State Corrections Law.

D. All licenses shall be issued from a properly bound book with proper reference stubs kept for that purpose, numbered in the order in which they are issued.

E. No license shall be issued to an applicant who does not agree to comply with all local laws, ordinances, rules and regulations of the City of Binghamton pertaining to the operation of a business or occupation.

§ 275-23. Appeal from denial of license. [Amended 1-24-1983 by Ord. No. 5-83]

A. Any applicant refused a license by the City Clerk may apply in writing within five business days of such refusal to the Mayor for a hearing on his or her application before a hearing officer designated by the Mayor. The Mayor may, in his or her discretion, designate a City officer as permanent hearing officer for appeals under this section, or he or she may make such designations on an individual basis.

B. Rejection of an application based upon any of the grounds set forth in § 275-10C(1) through (5) shall create a rebuttable presumption that the applicant is not entitled to receive a license hereunder. Accordingly, the burden of proof shall be upon the applicant in the hearing.

C. The hearing officer shall explain his or her denial or approval of the application in writing to the City Clerk and the applicant within five business days of the hearing.

D. If the hearing officer grants the application, the City Clerk shall issue the license pursuant to § 275-5 of this Code.

§ 275-24. Contents of license.

All licenses issued pursuant to this article shall state clearly the following information:

A. The name and address of the licensee and the fee paid for the license.

B. The name and address of the business of the licensee.

C. The number of the license.

D. The dates of issuance and expiration of the license.

§ 275-25. Expiration of license.

All licenses issued under the provisions of this article shall automatically expire on December 31 following the date of issuance of such licenses.

§ 275-26. Record of licenses.

It shall be the duty of the City Clerk to keep a record of all applications and of all licenses granted under the provisions of this article, giving the number and date of each license, the name and residence of the persons licensed, the amount of the license fee paid and the date of revocation of all licenses revoked.

§ 275-27. Revocation of license. [Amended 1-24-1983 by Ord. No. 5-83]

A. The Mayor of the City of Binghamton may revoke or suspend any license issued under the provisions of this article for any of the following causes:

- (1) Fraud, misrepresentation or false statement contained in the application for the license.
- (2) Fraud, misrepresentation or false statement made in the course of carrying on the business licensed under this Code.
- (3) Any violation of the provisions of this article.
- (4) Conviction of the licensee or any principal upon any of the grounds set forth above in § 275-10C(1) through (5) of this article during the term of the license.
- (5) Conducting the business licensed under this article in an unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a menace to the health, safety or general welfare of the public.

B. When a license shall be revoked or suspended, no refund of any unearned portion of the license fee shall be made. The Mayor shall notify the City Clerk of the revocation or suspension of any license, and the reason or reasons therefor in writing shall be served by the City Clerk upon the licensee personally, or by mailing by registered mail a copy of the same to the business address given by the licensee. A copy of such notice shall be filed in the office of the City Clerk.

§ 275-28. Appeal from revocation or suspension of license. [Amended 1-24-1983 by Ord. No. 5-83]

A. Any licensee whose license has been revoked or suspended by the City may apply in writing to the Mayor within five business days of receipt of the notice required by § 275-15B for a hearing on such revocation or suspension before a hearing officer to be designated by the Mayor. The Mayor may, in his or her discretion, designate a City officer as permanent hearing officer for appeals under this section, or he or she may make such designations on an individual basis.

B. Such application for a hearing shall stay the effect of any order of revocation or suspension until such time as the administrative appeal has been completed.

C. Said hearing shall be held within five business days of the receipt of the request by the Mayor.

D. The hearing officer shall explain his or her affirmation or reversal of the revocation or suspension of the license in writing to the City Clerk, the Mayor and the licensee within five business days of the hearing.

E. The hearing officer shall have the power to modify any revocation or suspension upon such terms are deemed equitable by him or her under the circumstances. In no event shall the hearing officer have the power to increase any penalty.

F. Revocation or suspension of a license upon any of the grounds set forth in § 275-15A(1) through (5) shall create a rebuttable presumption that the license was properly revoked or suspended except as provided below in Subsection G. Accordingly, the burden of proof shall be upon the applicant in the hearing.

G. Any revocation or suspension of a license upon the grounds that the licensee has been convicted of any offense involving the sale and/or possession of stolen property in relation to the place of business for which said license has been issued shall create an irrebuttable presumption that the revocation or suspension was proper, provided that an appropriate certificate of conviction has been entered as part of the record. In such cases, the hearing officer's powers shall be limited to reviewing the penalty as determined by the Mayor.

§ 275-29. License to be exhibited upon request.

Every person to whom a license has been granted hereunder, while exercising his or her license, shall exhibit said license upon request of any individual.

§ 275-30. Assignment of license prohibited.

A license issued under the provisions of this article shall not be assignable. Any holder of such a license who permits it to be used by any other person and any person who uses such license granted to any other person shall each be guilty of a violation of this article.

§ 275-31. License not to be issued to minor; exception.

No license shall be issued under the provisions of this article to a person under 18 years of age unless the parent or legal guardian of any such minor is a coapplicant with such minor for a license under this article.

§ 275-32. Issuance of duplicate license.

Whenever a license issued hereunder shall be lost or destroyed on the part of the holder or his or her agent, or employee, a duplicate in lieu thereof under the original application may be issued by the City Clerk upon the filing with him or her by the licensee of an affidavit setting forth the circumstances of the loss and what, if any, search has been made for its recovery.

§ 275-33. Application when license has been refused or revoked.

No applicant to whom a license has been refused or who has had a license which has been revoked shall make further application until a period of at least six months shall have elapsed since the last previous rejection or revocation, unless the applicant can show that the reason for such rejection no longer exists.

§ 275-34. Regulations applicable to licensees.

A. Changing place of business. If any licensee shall move his or her place of business from the place designated in the license, he or she shall immediately give notice to the City Clerk and have the same endorsed on the license. No licensee shall carry on business at any other place than the one designated in the license.

B. Cooperation with police. It shall be the duty of every licensee to cooperate with the City of Binghamton Bureau of Police in preventing the sale or exchange of stolen property. If a licensee has reason to believe that an attempt is being made to sell stolen property, he or she shall notify the Bureau of Police at once.

C. Lost or stolen property.

(1) If any article shall be advertised in the newspaper designated by the City for the publication of legal notices as having been lost or stolen, and if any goods or articles answering such advertised description or any part thereof shall be in or come into the possession of any dealer in secondhand goods, upon receiving actual written or oral notice of the similarity of the description of such articles, such dealer shall immediately give information relating thereto to the police.

(2) No disposition of such articles shall be effected until authorization to do so shall be given to such dealer by the police.

(3) A dealer in secondhand goods, when notified by the police that property in his or her possession is stolen or alleged to be stolen, shall take immediate steps to secure that property; and such items shall be marked "police stop." Thereafter, such property shall not be sold or removed

from the premises until notification is made to the dealer in writing by the police allowing such removal or sale. Whenever practicable, the police shall personally render such notification within 24 hours of the marking of the "police stop."

D. Records of purchases to be kept by licensee.

(1) Every dealer in secondhand articles shall keep a bound book of consecutively numbered transactions, in which shall be legibly written in English, at the time of every purchase or receipt of secondhand goods from a person other than a dealer in secondhand goods, the following information:

- (a) The date of the transaction.
- (b) The name and address of the person from whom goods are purchased.
- (c) Proof of identity as prescribed herein. Only the following shall be deemed acceptable evidence of identity:
 - [1] Any official document, except a social security account number card, issued by the United States government, any state, county, municipality or subdivision thereof, or any public agency or department thereof, or any public employer, which requires and bears the signature of the person to whom issued;
 - [2] Other identification documentation which, under the circumstances of any particular purchase, would lead a reasonable person to believe it to be accurate and reliable, when identification under Subsection D(1)(c)[1] of this subsection is not available.
- (d) Proof that the seller is over 16 years of age as required by Subsection F.
- (e) A general description of goods involved in the transaction, including distinguishing monograms or marks.

(2) Every dealer in secondhand goods who receives secondhand articles on consignment shall keep a record, in the above-prescribed book, describing the articles and the name and description of the person such items are received from as prescribed above in Subsection D(1).

(3) Such records shall be kept on the business premises of the secondhand dealership or at a place so designated on the duly approved license at all times during normal business hours. Such records shall be open during normal business hours to inspection by members of the Bureau of Police or any person duly authorized in writing by the Chief of Police for such purposes, who shall exhibit such written authority to the dealer.

E. Retention of records. All records to be kept under Subsections A through D, inclusive, shall be kept by the licensee for a period of at least two years from the date said record was made.

F. Restrictions on purchases from children; exceptions.

- (1) No person licensed under this article shall receive or purchase any goods, chattels, wares or merchandise from any child under the age of 16 years. However, such purchases may be made if said child is accompanied by his or her parent or legal guardian.
- (2) Said restrictions on children shall not apply to transactions involving the purchase or sale of stamps, currency or coins.
- (3) It shall be no defense to a prosecution for a violation of this section that in the transaction upon which the prosecution is based, the child acted as the agent or representative of another, or that the defendant dealt with such child as the agent or representative of another.

§ 275-35. Penalties for offenses.

A. Unlicensed dealers. Any person who, himself, or by his or her clerk, agent or employee, shall act as a dealer in secondhand goods as herein defined, without a license, or who shall violate any of the provisions of §§ 275-5 through 275-21, inclusive, of this article, or who, having had his or her license revoked, shall continue to act as a secondhand dealer shall, upon conviction, be punished as provided in § 1-4 of this Code.

B. Violations by licensees. Notwithstanding the provisions of § 1-4 of this Code, any person, duly licensed under this article, who shall not comply with the provisions of § 275-22, Subsections A through F, inclusive, of this article, entitled "Regulations applicable to licensees," shall be subject to administrative penalties, including revocation or suspension of any such license and/or the commencement of a civil action for a penalty as provided for by § 1-4 of this Code.

C. Injunctive relief available. In addition to the above-provided penalties and punishment, the Corporation Counsel of the City may maintain an action or proceeding in a court of competent jurisdiction to compel compliance with the provisions of this article or to restrain by injunction offenses against this article as provided by § 42 of the Second Class Cities Law.